



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2017-0454; FRL-9989-39-Region 4]

Air Plan Approval; NC; Permitting Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a portion of a revision to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina through the North Carolina Department of Environmental Quality (formerly the North Carolina Department of Environment and Natural Resources (NCDENR)), Division of Air Quality, through a letter dated March 24, 2006. The revision includes changes to permitting regulations. The revision is part of North Carolina's strategy to meet and maintain the national ambient air quality standards (NAAQS). This action is being taken pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2017-0454 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be

accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Ward can be reached via telephone at (404) 562-9140, or via electronic mail at ward.nacosta@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Through a letter dated March 24, 2006, the State of North Carolina, through NCDENR, submitted several changes to the North Carolina SIP for EPA approval. EPA is proposing to approve changes to the following regulations: 15A North Carolina Administrative Code (NCAC) 02Q Sections .0101, *Required Air Quality Permits*, and .0301, *Applicability*.^{1 2} EPA has taken, will take, or will not take separate action on all other changes submitted on March 24, 2006.³

¹ EPA received this SIP submittal on April 4, 2006.

² In the table of North Carolina regulations federally approved into the SIP at 40 CFR 52.1770(c), 15A NCAC 02D is referred to as “Subchapter 2D Air Pollution Control Requirements.”

³ On July 18, 2017, EPA took direct final action on changes to 15A NCAC 02D Sections .0101, .0103, .0810, .1902, .1903, and 15A NCAC 2Q Sections .0103, .0105, .0304, .0305, .0808 and .0810. *See* 82 FR 32767. EPA will be taking separate action on changes to 15A NCAC 02D Sections .1904 and .2001. EPA did not take action on changes

II. Analysis of the State Submittal

The revision that is the subject of this proposed rulemaking pertains to changes to air quality permitting regulations related to minor source construction activities under Subchapter 2Q, *Air Quality Permit Procedures*. Detailed descriptions of the changes are below:

2Q Sections .0101, *Required Air Quality Permits*, and .0301, *Applicability*, have been amended to reflect the changes to the North Carolina General Statutes regarding construction to allow additional preconstruction activities for minor sources. With respect to requirements regarding stationary source permits, in both 2Q Sections .0101 and .0301, an exception has been added to allow certain preconstruction activities prior to obtaining a final minor construction permit. Those activities are clearing and grading; construction of access roads, driveways, and parking lots; construction and installation of underground pipe work, including water, sewer, electric, and telecommunications utilities; and construction of ancillary structures, including fences and office buildings that are not a necessary component of an air contaminant source, equipment, or associated air cleaning device. 2Q Section .0101 has been revised to remove a prohibition on entering into irrevocable contracts for the construction, operation, or modification of air cleaning devices. EPA has preliminarily determined that allowing the foregoing preconstruction activities is consistent with the requirements of CAA sections 110(a)(2)(C) and 110(l) and federal regulations at 40 CFR 51.160–51.164.

Section 110(a)(2)(C) of the CAA requires that SIPs include a program for regulating the construction and modification of stationary sources as necessary to ensure that the NAAQS are

to 15A NCAC 2D Section .1201. because this rule pertains to incinerators and addresses emission guidelines under CAA sections 111(d) and 129 and 40 CFR part 60 and is not a part of the federally-approved SIP. A change to Regulation 15A NCAC 02D Section .1401 was withdrawn by NCDEQ on June 5, 2017. Changes to two regulations, 15A NCAC 02Q Sections .0508 and .0523, were not acted on because these rules are part of North Carolina's title V permitting program and are not a part of the SIP.

maintained. The basic purpose of new source review (NSR) permitting is set forth in 40 CFR 51.160(a), requiring NSR SIPs to set forth legally enforceable procedures that enable the State or local agency to determine whether the construction or modification of a stationary source would result in a violation of applicable portions of the control strategy, or would interfere with attainment or maintenance of a NAAQS. Under 40 CFR 51.160, states have discretion in conducting the minor sources permitting programs to exempt certain small or de minimis sources. Congress directed the states to exercise the primary responsibility under the CAA to tailor air quality control measures, including minor source permitting programs, to the state's needs. *See Train v. NRDC*, 421 U.S. 60, 79 (1975) (States make the primary decisions over how to achieve CAA requirements); *Union Electric Co. v. EPA*, 427 U.S. 246 (1976); *Greenbaum v. EPA*, 370 F.3d 527 (6th Cir. 2006).

Federal regulations limit the types of allowed preconstruction activities for new and modified *major* sources, *see* 40 CFR 51.165(a)(1)(xv) and 51.166(b)(11), and North Carolina has adopted these regulations into its SIP. But Federal regulations do not impose a corresponding limitation on preconstruction activities for *minor* sources. The exception for certain preconstruction activities found in both 2Q Sections .0101 and .0301 explicitly applies to facilities subject to 2Q Section .0300 (i.e., minor sources), whereas, as stated in both 2Q Sections .0101(b) and .0301(a), title V facilities (i.e., major sources) are subject to the title V procedures under 2Q Section .0500. Furthermore, the North Carolina statutory provision to which the regulatory exception for certain preconstruction activities refers in both 2Q Sections .0101 and .0301 explicitly provides that the exception “does not relieve any person from any preconstruction or construction prohibition imposed by any federal requirement, federal delegation, federally approved requirement in any State Implementation Plan, or federally

approved requirement under the title V permitting program” and “does not apply to any construction, alteration, or expansion that is subject to requirements for prevention of significant deterioration or federal nonattainment new source review” N.C.G.S. 143-215.108A.

With these proposed changes, North Carolina’s SIP would continue to prohibit the construction of emission units prior to issuance of construction permits. Therefore, there are no stationary-source emissions increases associated with any of the preconstruction activities allowed at 2Q Sections .0101 and .0301. Additionally, North Carolina has legally enforceable procedures to prevent construction or modification of a source if it would violate SIP control strategies or interfere with attainment or maintenance of the NAAQS, as required by 40 CFR 51.160(b).

The changes to North Carolina’s minor source permitting requirements, as contained in Subchapter 2Q of the North Carolina SIP, are not inconsistent with the requirements of the CAA and EPA’s regulations, and are thus approvable as part of the SIP. EPA is therefore proposing action to approve the aforementioned changes pursuant to the CAA and 40 CFR 51.160–164.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference regulations under Subchapter 2Q, *Air Quality Permits*, Sections .0101, *Required Air Quality Permits*, and .0301, *Applicability*, which have a state effective date of November 11, 2005. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve the aforementioned revisions to the North Carolina SIP submitted by the State of North Carolina on March 24, 2006, pursuant to section 110 because these changes are not inconsistent with the CAA and EPA's regulations. Changes to the other sections in these submissions have been or will be processed in a separate action, as appropriate, for approval into the North Carolina SIP.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 21, 2018.

Mary S. Walker,

Acting Regional Administrator,

Region 4.

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